

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on April 13, 1999 at 8:07 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis (R)
Sen. Bill Glaser (R)
Sen. Spook Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 240, 4/1/1999; HB 515,
4/9/1999; HB 674, 4/9/1999
Executive Action: HB 678; HB 515; HB 253; HB 248

HEARING ON HB 515

Sponsor: REPRESENTATIVE LARRY GRINDE, HD 94, LEWISTOWN

Proponents: Riley Johnson, NFIB
Webb Brown, Montana Chamber of Commerce
Mike Foster, Montana Contractors Association

Opponents: None

Opening Statement by Sponsor:

REP. LARRY GRINDE, HD 94, Lewistown, is a bill providing for an interim study of the effects of competition by state political subdivisions with the private sector.

CHAIRMAN DEVLIN said this has been heard before the Committee on Business and Industry, and that is where the amendment went on. He provided copies of the minutes from that hearing, **EXHIBIT(tas80a01)**.

Proponents' Testimony:

Riley Johnson, National Federation of Independent Businesses, said his organization stands in support of this bill and would like to participate in the study group. He provided written testimony, **EXHIBIT(tas80a02)**.

Webb Brown, Montana Chamber of Commerce, said his organization also supports this bill.

Mike Foster, Montana Contractors Association, said they support the idea of a study.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. STANG asked if the amendments were put on on the Senate side, and **REP. GRINDE** said they were. **SEN. STANG** asked if the House would accept those amendments, and **REP. GRINDE** said they would.

Closing by Sponsor:

REP. GRINDE had no closing statement.

HEARING ON HB 240

Sponsor: REPRESENTATIVE EMILY SWANSON, HD 30, BOZEMAN

Proponents: Riley Johnson, NFIB
Mark O'Keefe, State Auditor
Ron deYong, Montana Farmers Union

Opponents: John Mercer, Speaker of the House

Opening Statement by Sponsor:

REP. EMILY SWANSON, HD 30, Bozeman, said **HB 240** is a simple bill that allows for a five-year tax credit for certain employers who make a health benefit plan available to their employees. She said it costs \$3.7 million during the first year, the bill provides 50% tax credit for anyone who provides health insurance to their employees; the second year it provides a 35% tax credit; third year, 25%; fourth year, 25%; and fifth year, 25%.

REP. SWANSON said Section 2 of the bill indicates that because this is a health-related issue, it was intended that the money to pay for this would come out of the tobacco settlement proceeds; however, the way the bill came out of the House, the tobacco settlement proceeds can only be used for this purpose. She said she is proposing an amendment, **EXHIBIT(tas80a03)**, that would essentially set the bill up so that it could behave in the same manner as

HB 131, which would set up various accounts for this money to be used. If we allow 30% of the money from the tobacco settlement proceeds to go into the General Fund, it would say that the remainder of those proceeds would be deposited into this account to be used for health-related purposes, among which could be the Childrens Health Insurance Program, the Montana Comprehensive Health Association Program, the Tobacco Prevention Program, and a program like this, but would stipulate that any money that the tobacco settlement proceeds would be used for should be health-related purposes.

CHAIRMAN DEVLIN asked if this amendment would make necessary a new Fiscal Note, and **REP. SWANSON** said that it would not change the impacts. This merely sets up an account so the money can move elsewhere.

Proponents' Testimony:

Riley Johnson, National Federation of Independent Businesses, said his organization is in strong support of this bill. He said this is the only bill in this session which really addresses what they feel is the crux of the problem with health insurance for small businesses. He said less than 25% of small employers have some form of health insurance program. If this incentive could actually increase that by 10%, it would be worthwhile. He provided written testimony, **EXHIBIT(tas80a04)**.

Mark O'Keefe, Montana State Auditor, said this bill came out of his office, and it was designed initially to address the problem of small businesses and the inability to provide affordable health insurance in Montana. He said the legislature has done a

lot to make health insurance available to Montanans in the last decade, but nothing has been done to address the issue of affordability. The cost of insurance has continued to go up, and as a result, fewer and fewer Montanans are able to afford it. This bill addresses the affordability of insurance for small employers. 96,250 small businesses exist in Montana, and they should at least be able to afford health insurance. Only 26% of employers who have ten or fewer employees provide any health insurance. This bill proposes to solve that problem.

Ron deYong, Montana Farmers Union, said that in tough economic times, the first thing a farmer or rancher does is drop their health insurance because they cannot afford it any more, and the second thing is one of the spouses goes to work in town, a lot of times for small employers. If that small employer could afford a health insurance program, it would benefit that farm family enormously. It would also help out the farmer or rancher who has employees. He said they strongly support **HB 240**, as well as the amendment.

Opponents' Testimony:

John Mercer, Speaker of the House, apologized for this bill. He said he is in favor of what the bill is trying to do, but his concern is with what is being done with the tobacco money. The House of Representatives was unable to pass **HB 131**, which was the allocation of the tobacco settlement proceeds. This bill was sneaked through the House, which he regrets because of the provision that allocated 100% of the tobacco proceeds for this bill, which he believes is wrong. He suggested that this bill be decoupled from the tobacco settlement by deleting any reference to that.

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. SWANSON said she thinks the House was unable to pass **HB 131** because it stipulated that half of that money should be used for tax relief. She said she feels, and so do many others in the House, that it is highly inappropriate to stipulate that money from the tobacco settlement should be articulated as necessary for tax relief. That money is a result of litigation, and it is very clear from both the federal government and the tobacco companies that have settled on that litigation that that money is intended to be used for health-related purposes. This bill fits that intent.

HEARING ON HB 674

Sponsor: REPRESENTATIVE CHASE HIBBARD, HD 54, HELENA

Proponents: Mary Bryson, Director, Department of Revenue
Cathy Muri, Department of Administration

Opponents: None

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, Helena, said this is a very simple bill that is the result of an audit that turned up some inappropriate uses of bed tax monies, and the Department of Revenue requested a committee bill to solve this problem. It is an act revising the distribution of lodging facility use tax revenue paid by state agencies for in-state lodging; providing that the lodging facility use tax attributable to state agencies be returned to the state agency fund from which the tax was paid. He said currently the 4% that is paid on employees' travel goes to the General Fund. Many of the agencies are partially state funded and partially federally funded, and when that federal money is returned to the State General Fund it leads to some legal problems and some Constitutional problems that were uncovered by the audit. This simply diverts the money back to the fund from which it came.

Proponents' Testimony:

Mary Bryson, Director, Department of Revenue, said the legislative auditor brought this issue regarding the distribution of the accommodations tax monies to the attention of the Department of Revenue and the Department of Administration. She said when state employees travel throughout the state, they are subject to paying the 4% accommodations tax, and the state agencies reimburse those employees for that 4% accommodations tax. When that money is collected by the Department of Revenue, 4% that is associated with state employees' travel is deposited into the General Fund, as is required by current law. The legislative auditor pointed out that that money should perhaps be allocated back to the fund from which it originated to protect some of the federal programs. That is the purpose of this bill, and she urged support.

Cathy Muri, Department of Administration, said **HB 674** changes the distribution of the accommodations tax paid by state agencies from the General Fund to the funds from which the in-state lodging was made. This statutory change is necessary to comply with federal and state law. She urged support of this bill.

Opponents' Testimony: None**Questions from Committee Members and Responses:**

SEN. STANG said, assuming a Highway Department worker is required to spend the night out, and part of his pay probably comes out of the Reconstruction Trust Fund, and the project that he is working on might be 87% federally funded and 13% state funded, would that accommodations tax have to be apportioned to the two funding sources. **Ms. Bryson** said it would be divided at the proportion that it was paid out.

SEN. STANG asked if that would create an accounting nightmare for the various state departments, and **Ms. Bryson** said that agencies currently allocate those monies according to the funding split, so that information is available at the agency level. She said that the Department of Revenue and the Department of Administration will have more of an accounting nightmare in determining how that split is going to occur when they put that money back in.

Closing by Sponsor:

REP. HIBBARD said this bill is fairly straightforward and would put the Department of Revenue in compliance with the audit and put that money back from whence it came. He thanked the committee for their time.

EXECUTIVE ACTION ON HB 674

Motion/Vote: **SEN. ELLIS** moved that HB 674 BE CONCURRED IN.
Motion carried 8-0. SEN. ELLIS will carry on the floor.

EXECUTIVE ACTION ON HB 678

CHAIRMAN DEVLIN said there is a very limited time to deal with this bill, and it has been difficult to get enough numbers punched out in two days to make reasonable decisions on this bill even though there is a need. He said care needs to be taken in dealing with it, so the thought is that we would amend the bill to the extent that the House would refuse the amendments, hopefully, and then it would be moved into conference committee for further study. He asked **SEN. GLASER** for the subcommittee's report.

SEN. GLASER said that the subcommittee amended the bill to backfill the lost revenues by using a formula created by him and **Jim Gillett**. He said they deleted from the law provisions of

HB 20, which is a reimbursement mechanism from a previous tax reduction and **SB 417** and folded that into **HB 678** at the 1998 level. They recommend that each Governor's budget from here on have the formula amount in the budget so that it will be discussed every two years. They have fixed the increment district bond problems. They earmarked \$80 million for this, and they put in **SEN. BOHLINGER'S** amendment which creates a ratio formula by basing an increase on increases in income tax revenue.

Motion: **SEN. GLASER** moved **AMENDMENT HB067803.ALH, EXHIBIT (tas80a05)**.

Discussion:

SEN. STANG said he mostly agreed with the amendments because the concept moves Montana in the right direction. He said he wanted to set the \$80 million to \$90 million, and so he may vote no on this amendment.

SEN. BOHLINGER said from the perspective of those who have concerns about the reimbursement of local governments, he feels their needs must be covered and agreed that the negotiation should begin at \$90 million.

SEN. DEPRATU said in this case he believes in starting lower because it seems when it comes to giving away tax money it is very easy to raise it and make ourselves look good, but it is never easy to adjust a high figure down. He said he also agreed with the \$80 million figure.

SEN. STANG said he would support the amendment as written and then propose an amendment changing that to \$90 million.

Vote: Motion carried 9-0.

Motion: **SEN. BOHLINGER** moved **A PROPOSED AMENDMENT CHANGING THE \$80 MILLION TO \$90 MILLION**.

Discussion:

SEN. GLASER said in the General Fund status sheet there is approximately \$70 million that have already been allocated to other bills, and there is approximately \$20 million involved in **HB 20** and **SB 417**, but \$90 million is probably going to be a little on the high side. He said he agrees with the \$80 million figure.

SEN. DEPRATU said he would resist the motion for the reasons he stated earlier.

SEN. ECK said she would support the \$90 million. She said we have to recognize that we have promised local governments that they will be reimbursed, but what is really happening in many cases is that they are allowed to increase their mills. She said as much as can be done with real reimbursement should be done. She said residences are only getting one-eighth the relief of businesses, and in addition to that, in many cases the mills are going up, making taxes go up. This reimbursement proposal is important and it should have adequate funding in it to do the job.

Vote: Motion failed 4-5 with Devlin, Ekegren, Ellis, Glaser and Depratu voting no (Roll call vote #1).

Motion: **SEN. BOHLINGER** moved THE CONCEPTUAL AMENDMENT THAT ON PAGE 2, SECTION (5), "INCREASED OR DECREASED BY THE SAME PERCENTAGE OF THE PREVIOUS YEAR'S INDIVIDUAL INCOME TAX COLLECTIONS AS CHANGED FROM THE 1999 TAX YEAR'S INDIVIDUAL TAX COLLECTIONS" BE ADDED.

Discussion:

SEN. BOHLINGER said in communities like Billings where local governments are working against caps on what they can spend, it has caused them to be very frugal in their management of the assets. However, he said the cost of providing services is far greater than the revenues that are being generated from this new and expanded tax base, and he feels that a formula like this will provide the additional revenues necessary to accommodate growth and provide services for the people that live there. He said he also feels that the ease with which this calculation can be made is attractive. It is simple and straightforward.

CHAIRMAN DEVLIN said he would have a problem with the amendment simply because the rural counties would take the hit on it and the bigger, more populous counties would have a distinct advantage when you get into the population part of it.

SEN. STANG said this is an amendment that the House would probably not like and would reject, which would help to move this into a conference committee; but the other reason is that it is a concept that needs to be developed further.

SEN. ELLINGSON said he was excused when this bill was heard, and he asked if **SEN. BOHLINGER** could expand on this amendment. **SEN. BOHLINGER** said this was introduced by **Mayor Kadas** of Missoula.

He explained to the committee the difficulty Missoula is having providing for the growth that is occurring there, and they need a source of funding that will grow in relation to the population expansion. He felt that if it is tied to income taxes paid, and the rebate to the community was based on the taxes paid, there would be more money available to accommodate the growth and provide the services that are demanded. He said that since this is a conceptual amendment, there are no figures available, but he said he felt we could anticipate a greater pool of dollars available.

SEN. ELLINGSON said, then, that as the income taxes grow in a particular community, that community would be entitled to a greater reimbursement, So if statewide income taxes grow by 5% in a particular year, the funding pool would grow by \$4 million for distribution throughout the state. He wondered if he was understanding the concept. **SEN. GLASER** said the funding pool recommendation in **HB 2** as it came from the Governor would increase by that amount; and if there is a downturn, there is a risk that that might go down.

CHAIRMAN DEVLIN asked if the bill provided for a natural increase of 1.5% regardless, and **SEN. GLASER** said that is now gone.

SEN. ELLINGSON asked, then, if there was a floor, and **SEN. BOHLINGER** said in the original form there was a growth of 1.5% allocated annually, but it was not enough so it was taken out.

Vote: Motion carried 7-2 with Ekegren and Ellis voting no.

Motion: **SEN. STANG** moved PROPOSED AMENDMENT SUGGESTED BY MADALYN QUINLAN, OPI, REGARDING COORDINATION INSTRUCTION, **EXHIBIT** (tas80a06) .

Discussion:

SEN. STANG said this is a coordination amendment for **HB 678** with **HB 90** and **SB 260**. It basically says that "if those two bills and this act are passed and approved and amend 20-9-141, then section 20-9-141 shall read as follows." This basically makes it so it sucks in all of the other nonlevy revenue that may have been missed. It is a technical amendment.

Vote: Motion carried 7-0.

Motion: **SEN. GLASER** moved that **HB 678** BE CONCURRED IN AS AMENDED.

Discussion:

SEN. STANG said it is important that this bill move along. This is an issue that definitely needs to be dealt with, and he is sure that there will be an adequate amount of information from the various agencies to make a decision possible.

SEN. GLASER said that this bill is moving along on three tracks: 1) the House concept, 2) the OPI and Department of Revenue concept, and 3) the Gillett and Glaser concept. He said it is extremely important that the Department and the legislative staff continue to work on all three tracks because if they don't, they will not be prepared to help the conference committee when they drift from one track to the other.

SEN. STANG said this mechanism does not backfill for **SB 184**, and **SEN. GLASER** said that with the amendments, it does. He also said this bill as amended backfills 128, 658, 530, 200, 260 and 184. **SEN. STANG** said if that were the case, the \$87 million would not be enough. **SEN. GLASER** said that completely depends on what is done with **SB 184**. He said the mechanism is there to do what needs to be done.

Vote: Motion carried 9-0.

EXECUTIVE ACTION ON HB 515

CHAIRMAN DEVLIN said the Business and Industry Committee had put amendments on this bill to make it a study, and he asked **Mr. Heiman** if that is indeed all it does. **Mr. Heiman** said that was correct.

Motion: **SEN. ELLIS** moved that HB 515 BE CONCURRED IN.

Discussion:

SEN. ELLIS asked if this is a mandated study, and **Mr. Heiman** said on page 5, line 27, it is a mandated study.

CHAIRMAN DEVLIN said it is something that needs a lot of consideration before it comes in as a bill, and this sets that up.

SEN. GLASER says he sees that it is mandatory that it be assigned to a committee, but the committee may do whatever they want with it.

SEN. STANG said perhaps we should do what the Business and Industry Committee wanted and kill the bill. He said the agencies have studied this issue, and he feels this would tend to micro-manage those agencies. He said since it is not truly mandatory, he would vote against it.

Vote: Motion carried 6-3 with Eck, Ellingson and Stang voting no (Roll call vote #2).

CHAIRMAN DEVLIN said **SEN. SWYSGOOD** would carry the bill.

EXECUTIVE ACTION ON HB 540

CHAIRMAN DEVLIN said this is the question to the people about a flat fee system on automobiles.

SEN. GLASER asked if there was some fiscal information available to the committee this morning, and **SEN. STANG** said **Mr. Gillett** said he would have it to the committee as quickly as possible, but it was not available yet.

Motion: **SEN. GLASER** moved that HB 540 BE CONCURRED IN.

Discussion:

CHAIRMAN DEVLIN said he had requested a new Fiscal Note, and as long as the Fiscal Note is available before it goes on the floor, it is legal. He asked **Dave Galt, Department of Transportation**, if he had seen a Fiscal Note. **Mr. Galt** said he had checked just a few minutes previously, and they were putting it together at that time.

EXECUTIVE ACTION ON HB 253

Motion: **SEN. STANG** moved that HB 253 BE CONCURRED IN.

Discussion:

SEN. STANG said he particularly likes this bill. He said he has been really consistent in his march to get rid of the inheritance tax because he feels it is money that does not belong to the state.

SEN. ELLIS said he agreed with **SEN. STANG**.

SEN. GLASER said that if this stays on the status sheet, it will come out of local government. He agrees with **SEN. STANG** about how poor a taxing policy this is, but he said he feels like we

cannot afford to do this this year, and he will have to vote against it.

SEN. BOHLINGER said there are still estate taxes even if inheritance taxes are eliminated, and he supported **SEN. STANG'S** motion.

Vote: Motion failed 3-6 with Devlin, Eck, Ekegren, Ellingson, Glaser and Depratu voting no (Roll call vote #3).

Motion/Vote: **SEN. DEPRATU** moved that HB 253 BE TABLED. Motion carried 6-3 with Bohlinger, Ellis and Stang voting no (Roll call vote #4).

The committee was recessed at 9:30 a.m. so that the information could be provided.

The committee reconvened at 10:35 a.m.

EXECUTIVE ACTION ON HB 540

CHAIRMAN DEVLIN said the committee now has a new Fiscal Note on **HB 540**, **EXHIBIT (tas80a07)**, and it is indeed a considerable fiscal bang. He said this Fiscal Note is figured upon the 1.4% that is in

SB 260, and reflects a \$5.5 million-a-year bang on top of what **SB 260**, which is up to almost \$30 million now. He said this bill is the question to the people.

SEN. STANG passed out information regarding projected taxes paid on individual light vehicles in 2001 under **SB 260** compared to registration fees proposed under **HB 540**, **EXHIBIT (tas80a08)**, provided by **Jim Gillett**. He said perhaps this information will help the committee decide what they want to do with this bill.

CHAIRMAN DEVLIN said **HB 540** cuts the fees more than what **SB 260** does, so more people would be covered, but everybody gets a savings out of **SB 260** because it is still ad valorem. This would be a savings on top of the savings.

SEN. STANG said his personal preference on vehicle taxes is that it be paid on the value of the car, but that is not a reason not to put this before the voters. **CHAIRMAN DEVLIN** asked if the figures provided in Exhibit 8 took into consideration the \$18.25 in fees that are paid by everyone regardless of what system they are under, and **SEN. STANG** said that that is paid on top of this fee, and he did not know if they considered the total value or not.

CHAIRMAN DEVLIN asked **Dean Roberts, Department of Transportation**, if he had any further information for the committee. **Mr. Roberts** said those figures were just on the tax, not the fees, for either bill.

SEN. EKEGREN said that no matter what a person pays for their vehicle, they both use the same highways and the same services, and the person who pays more for their vehicle should not be penalized because they can afford a more expensive car.

SEN. ELLINGSON asked if the impact on local government as reflected on the Fiscal Note on page 3 is accurate, and **Brian Smith, Department of Revenue**, said these numbers are completely different from those provided by Department of Revenue.

SEN. GLASER said page 3 of the Fiscal Note, under the estimated fiscal impact of **HB 540**, talks about the Department of Transportation current law **SB 260**, and then there is a negative \$9 million number there. He said he did not understand that number.

SEN. ELLIS said the legislature has already provided a great amount of tax relief to Montanans, and while passage of this bill will cost the state possibly another \$5 million, it actually harms some of the taxpayers who have already received a tax cut and gives other taxpayers an additional tax break. On that basis, **SEN. ELLIS** said he is going to move to table.

Motion/Vote: **SEN. ELLIS** moved that **HB 540 BE TABLED**. **Motion failed 2-6 with Devlin, Bohlinger, Ekegren, Glaser, Stang and Depratu voting no** (Roll call vote #5).

EXECUTIVE ACTION ON HB 674

Motion: **SEN. GLASER** moved **TO RECONSIDER ACTION ON HB 674**.

Discussion:

CHAIRMAN DEVLIN said this is **REP. HIBBARD'S** bill. He said this bill has \$105,000 a year bang to the General Fund, and he wondered if the committee had overlooked that fact.

SEN. ELLIS said he had had **Mr. Heiman** prepare an amendment that would adjust the appropriations to all the different accounts to get rid of that \$105,000 hit to the General Fund. The Department of Revenue thinks this will get them in order with the federal government a little better, and he suggested that the committee

pass the bill and make sure that the General Fund is backfilled for that \$105,000 hit.

Vote: Motion carried 8-0.

Motion: SEN. ELLIS moved A PROPOSED AMENDMENT THAT ANY OF THE MONEY GOING BACK TO THOSE FUNDS WILL REDUCE THE STATUTORY APPROPRIATION A SIMILAR AMOUNT.

Discussion:

Mr. Heiman said he did not have a hard copy of the amendment, but he explained that the proposed amendment is to Section 2, a provision that any of the money that goes back to those funds reduces the statutory appropriation a similar amount. **CHAIRMAN DEVLIN** asked what the effect of that would be, and **SEN. ELLIS** said this bill would cost the General Fund \$105,000, but then the statutory appropriation would wash that out so there would be no hit on the General Fund. It would zero it out.

Terry Johnson, Legislative Fiscal Division, said a statutory appropriation as defined by statute as language that does not specify a specific dollar amount. He said he did not know how the amendment could be drafted in such a way that that statutory appropriation could be adjusted accordingly.

SEN. ELLIS said he would withdraw his motion.

SEN. DEPRATU asked **Mr. Johnson** if the amendment could be worded in such a way that each account that was reimbursed the tax would then reimburse the General Fund by a like amount. **Mr. Johnson** said that would be possible.

SEN. ELLIS asked the Department of Revenue how critical this idea is, and **Brian Smith, Department of Revenue**, said there is still a problem with any federally funded accounts.

SEN. STANG asked, since this bill was brought forward to take care of an audit exception that was noted in dealing with federal funds, what effect not passing this bill may have on the federal funds since this has previously been done illegally. He wondered if there was a chance that those funds might be jeopardized. **Jim Gillett, Legislative Audit Division**, said that the federal government might put up with this for a little while if this bill is not passed, but there will come a time when they will just not send the funding.

CHAIRMAN DEVLIN asked if this was a warning to the state from the federal government, and **Mr. Gillett** said that under federal law, from an audit perspective, the Legislative Audit Division acts on their behalf. When the Division reports this to the federal government, it will not just go away.

SEN. ELLIS asked if **Mr. Johnson** would be willing to work with **Mr. Heiman** to create an amendment that would fix this bill so that the General Fund is made whole. They said they could.

EXECUTIVE ACTION ON HB 248

CHAIRMAN DEVLIN said this is the beneficial use bill. He said he is not entirely comfortable with this bill and neither is **SEN. STANG**.

SEN. STANG said he understood that there had been a number of discussions between Butte-Silver Bow and the Department of Revenue, and his assessment of the situation is that if the Department would agree not to certify the mills, it gives Butte-Silver Bow the benefit of going through the process and appealing this bill and the ruling of the Department. If the ruling should come against Butte-Silver Bow, it won't happen until very close to the next session where they would have time to come in and bring this bill again and change it. He said he thinks the Department has put themselves in a position where they may have assessed the tax in error, and they could come to a situation where if Butte-Silver Bow did not have to pay the tax, it could jeopardize the beneficial use tax.

CHAIRMAN DEVLIN asked **Mary Bryson, Director, Department of Revenue**, what the status of the negotiations was, and she answered that they have been continuing their discussions with Butte-Silver Bow and the companies involved. The Department has issued a letter regarding the fact that the Department will not be making the assessment again for the three companies involved. She said she can assure that a tax bill will not be issued before November of 2000, and that gives everyone an opportunity to go through the administrative process of trying to resolve the issue. She said she had the feeling from the Butte-Silver Bow people that they would be willing to reconsider the legislation at this point and wait until the next session, depending on the outcome of the administrative process.

CHAIRMAN DEVLIN said this committee is going to take action on this bill, but they will buy a little time with an amendment so it will end up in a conference committee. He said he would expect some serious movement from the Department or the amendments will be taken off and the bill will be sent out. He

said he is not going to wait another year and see the troop coming into the Revenue Oversight time after time. **Ms. Bryson** said that she expects that if it gets to that point, they will be coming in hand in hand. She said they will try to resolve this by the end of the day.

Motion: SEN. DEPRATU moved AN AMENDMENT TO THE NEW SECTION 3 TO MAKE THE EFFECTIVE DATE DECEMBER 31, 2003, AND TO GET RID OF THE APPLICABILITY CLAUSE, **EXHIBIT**(tas80a09).

Discussion:

CHAIRMAN DEVLIN said that if at any time later today or before second reading tomorrow there is some serious negotiation and settlement of this matter, it can be amended on the floor. He said he wants to pressure all parties to reach an amicable conclusion.

SEN. ELLINGSON said he would vote in favor of the amendment for the purpose of keeping this bill alive because Butte-Silver Bow's municipal water company has a good point and he was singularly unimpressed with the rationale of the Department of Revenue in explaining why they thought they could tax the water company in the way they have been taxing it.

Vote: Motion carried 8-0.

Motion: SEN. DEPRATU moved that HB 248 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. STANG said he was going to vote against this bill. He said although he does agree with **SEN. ELLINGSON**, he also realizes that by starting to take any type of utility out of the beneficial use tax, it puts the beneficial use tax in jeopardy.

SEN. ELLIS said he had a problem with the arguments by the Department that this threatens the beneficial use tax because in truth this water is owned by Butte-Silver Bow and is transmitted through their system and sold to private companies. He wondered if this sale is taxable for beneficial use, why all the water that that system sells is not subject to the same tax.

Vote: Motion carried 8-1 with Stang voting no. **SEN. LYNCH** will carry this bill on the floor.

EXECUTIVE ACTION ON HB 540

SEN. GLASER said that **Jim Gillett** is available to help the committee on **HB 540**. He asked **Mr. Gillett** if the Fiscal Note reflects what he expected it to. **Mr. Gillett** said it does not. **CHAIRMAN DEVLIN** asked if he would check it out and provide some further information for the committee this afternoon. **Mr. Gillett** said he would.

SEN. ELLINGSON said he had some questions on page 3 of the Fiscal Note. He said he wanted to know whether under the column "proposed law," which he takes to be **HB 540**, showing a \$74 million fiscal impact in Fiscal Year 2001, whether that was cumulative with **SB 260**, on top of **SB 260**, or is that simply the fiscal impact of **HB 540** alone. **Mr. Gillett** said he did not know, but he will check and report back.

EXECUTIVE ACTION ON HB 569

SEN. ELLINGSON asked if the Chair would entertain a reconsideration on **HB 569**. He said this is the alternative transportation bill.

Motion: **SEN. ELLINGSON** moved TO RECONSIDER ACTION IN TABLING **HB 569**.

Discussion:

SEN. ELLINGSON said this is the bill that was amended to provide a small tax credit to businesses who were helping employees make use of alternate transportation. Since the action taken by the committee in tabling this bill, some interested persons have discussed the bill with various members of the committee about how this could stimulate the growth of alternative transportation and also how it would be good for those businesses who wished to participate in that. He said that the impact of this bill is good and he urged reconsideration on those bases.

SEN. BOHLINGER said he supported bringing **HB 569** forward. He said this is an environmentally friendly bill. It will save about 200 gallons of gas a year, which helps relieve air quality problems, and it will help businesses provide more parking in central business districts. He said he would like to see some sort of incentive provided for major employers who are tax exempt, such as hospitals and governmental agencies, to participate in a program such as this.

CHAIRMAN DEVLIN said he will not support the motion. He said businesses can already get a deduction for providing that service

now, but this would give them another consideration through this bill. He feels it provides a double consideration.

SEN. ECK said this bill encourages policies that save energy, and it will not only help a number of companies to work in this direction, but will also help stimulate discussions and possibly help promote transit systems.

SEN. BOHLINGER said that this program would also help increase revenue that can be used for matching federal funds.

SEN. ELLINGSON said there are three reasons this is a good bill: 1) it is good for businesses, 2) businesses like Stone Container and Stillwater Mining provide bus service to their employees, and that should be encouraged, and 3) it is good for the environment.

Vote: Motion failed 4-5 with Devlin, Ekegren, Ellis, Glaser and Depratu voting no (Roll call vote #6).

The committee recessed until 2:05 p.m., April 13, 1999.

SEN. DEVLIN referred the committee to the fifth revision of the Fiscal Note for **HB 540, EXHIBIT(tas80a10)**. He asked **Jeff Blend, Department of Revenue**, to explain the Fiscal Note.

Mr. Blend said the Fiscal Note received by the committee this morning had a major typing error on it regarding the current law number for the Department of Transportation on page 3, which was a minus \$9.7 million, and the new Fiscal Note reflects a positive \$13 million. He said they did not know where that number came from, but that has now been corrected.

Motion: **SEN. GLASER** moved **TO AMEND HB 540 ON PAGE 54, LINE 24, BY CHANGING THE DECEMBER 31, 2001, AND ON LINE 25, CHANGING IT TO JANUARY 1, 2002.**

Discussion:

SEN. GLASER said that if they are successful in the vote, this would set it off one year before it would take effect, and that makes the fiscal impact in the fiscal year after that.

SEN. STANG said that the original Fiscal Note on this bill was \$13 million. He said, however, that as a voter, if he voted on something and he had to wait a year to see the effect, he would not be happy.

SEN. ELLIS said **SEN. STANG** is right to a certain extent. The election will be held in November of 2000, and the legislature

will be meeting in January of 2001. This would apply to one-half year without the amendment, so he assumed it would have twice the fiscal impact for the following year. **SEN. GLASER** said that currently the bill would go into effect January of 2001 without the amendment.

SEN. ELLIS asked if this was the maximum fiscal impact, and **Mr. Gillett** said the General Fund effect is in 2001, but it does not double in 2002, even though it is a full fiscal year rather than a half, because you have growth in the number of vehicles and the cost of reimbursing school general funds is lower in that second year because they also pick up some growth. He said the effect in the second year does go up something in the area of \$1 million, but it does not double.

SEN. ELLIS asked if there would be a \$13 million impact in the next biennium, and **SEN. GLASER** said that was correct.

SEN. DEPRATU asked **Dean Roberts, Department of Transportation**, for further clarification. **Mr. Roberts** said the Department of Transportation has a problem with this bill which they have had all along, and that is that they have costs of about \$300,000 to do the work necessary to make this work, and there is no way that can be done between November and January 1st. This amendment would resolve that.

SEN. DEPRATU said people in Montana are reasonable, and he felt that the voters could be informed of the situation when they receive their voter pamphlet.

Vote: Motion carried 8-1 with Stang voting no (Roll call vote #7).

Motion/Vote: **SEN. GLASER** moved that HB 540 BE CONCURRED IN AS AMENDED. Motion carried 8-1 with Ellingson voting no. **SEN. DEPRATU** will carry this bill on the floor.

EXECUTIVE ACTION ON HB 674

CHAIRMAN DEVLIN said he did not really want to do much with this bill. He said there has been a lot of discussion about the federal government doing something unless this is resolved, and in two years there will be another report saying, "You ought to do this," and he was not inclined to give up the \$105,000 a year.

SEN. ELLIS said there is an amendment which would recover that money that has been approved by all parties.

Motion: **SEN. STANG** moved that HB 674 BE CONCURRED IN.

SEN. ELLIS read the proposed amendment. "Unless prohibited under terms of original receipt of the funds used to pay the lodging facility use tax, each fund shall reimburse the state General Fund for the deposit made pursuant to 15-65-121."

Motion/Vote: **SEN. ELLINGSON** moved **AMENDMENT HB067401.ALH.**

Motion carried 9-0.

Motion/Vote: **SEN. STANG** moved that **HB 674 BE CONCURRED IN AS AMENDED.** **Motion carried 9-0.**

EXECUTIVE ACTION ON HB 240

CHAIRMAN DEVLIN said that the amendments that had been put on this bill do not fit under the title.

Motion: **SEN. STANG** moved that **HB 240 BE CONCURRED IN.**

Motion: **SEN. STANG** moved **AMENDMENT HB024002.AGP.**

Discussion:

SEN. STANG said the amendment merely says "providing for the use of the funds," and they were prepared by Greg Petesch.

SEN. ECK said there is a lot of concern out there about these tobacco proceeds being put into a trust fund or something, and Amendment No. 3 says that 30% should go to the General Fund and the remainder should be appropriated by the legislature for health-related programs. She said it is broad enough that it does not tie the legislature down, and it requires that 30% goes into the General Fund. She said the tobacco settlement proceeds should not be used for tax relief.

SEN. BOHLINGER said he is in favor of the amendment. He said some of the unfinished business of this session deals with the way the tobacco funds are dealt with. He said he believes that the people of Montana have some expectations about how these funds will be used, and stipulating that 70% of those funds will be used for health-related programs covers that concern.

CHAIRMAN DEVLIN said as the bill came to this committee, it was for credit on premiums paid by an employer, and now appropriations are being made out of it for 30% to the General Fund and down through the list of programs. He said anytime you take money out for a special fund, you are just moving General Fund monies out to that program. He said he will resist the amendment.

SEN. GLASER asked if something other than "appropriated" would have to be used. **Mr. Heiman** said it does not actually appropriate any money, it just provides that the money has to be appropriated.

SEN. STANG said he is in favor of the amendment and he likes the bill. He said he likes the fact that these funds are going to health-related programs, and he appreciates the fact that this helps small businesses provide health insurance for their employees. He said it is appropriate use of the tobacco settlement money.

SEN. ELLINGSON said that as the bill came to the Committee, 100% of the tobacco money was going to go into this account, and there is a consensus that that is not a good idea. He said this is a good bill, and he favored passing the amendment so this good bill can be moved out.

SEN. ELLIS said he is going to support the amendment and is going to suggest another amendment to replace item "C" with state mandated Medicaid responsibilities. He said he thinks the amendment makes a bad bill slightly better, but he is not going to support the bill in any case.

SEN. DEPRATU said he is going to vote against the amendment and against the bill. He said he did not think that the tobacco money should be used as a tax credit to any employer. He said the concept is good, but the funding is not.

SEN. EKEGREN said there is \$30 million from the tobacco settlement, and everyone wants special funds, but he wondered if these funds were not paid out of the General Fund. **CHAIRMAN DEVLIN** said that **HB 2** will fund the various programs out of these monies.

SEN. ECK said she has worked for years to get money for various health programs, but the Appropriations Committee will not provide funding for those programs. They are only funded because there is some federal money available. She said for the first time there is a block of money that is coming for that specific purpose, and she believes it will make a big difference for the health of Montana citizens.

SEN. BOHLINGER said it is his understanding that something was stated early on that the federal government had put some restrictions on how these funds were to be spent, and that if it was not earmarked for health-related matters, it should not be used just for General Fund. If it is, they may require repayment

of the federal share of Medicaid. **CHAIRMAN DEVLIN** said there are no strings attached at this point.

SEN. STANG said he believes it is prudent to put the amendment on and pass the bill out. He said this bill will be talked about on the floor one way or the other, and he believes it is a good bill.

Vote: Motion carried 5-4 with Devlin, Ekegren, Glaser and Depratu voting no (Roll call vote #8).

SEN. ELLIS said he would like to add a further amendment, Item (d), "state mandated Medicaid responsibilities."

Motion: **SEN. ELLIS** moved AN AMENDMENT ADDING "(D) , STATE MANDATED MEDICAID RESPONSIBILITIES."

Discussion:

SEN. STANG said his only question is whether there is any particular order related to these items. **SEN. ELLIS** said that many of the health issues paid for by Medicaid are the result of cigarettes, and it is a logical place to spend these monies.

SEN. STANG asked, though, if **SEN. ELLIS** was prioritizing this, and that after these other things are funded, anything left over goes to Medicaid, or something else. **SEN. ELLIS** said he didn't think they were prioritized presently and it didn't really matter to him.

SEN. ECK said she thought that this amendment is perfectly appropriate.

Vote: Motion carried 9-0.

Motion: **SEN. STANG** moved that HB 240 BE CONCURRED IN AS AMENDED.

Discussion:

CHAIRMAN DEVLIN said he is going to resist the motion. He said this bill was put together one way and now we have amended it to change almost the total intent of the original bill.

SEN. ECK said that this bill was by request of the Committee on Jobs and Income, and most of those parts of the bill that were supported by Democrats have been removed from the bill. She said most of the jobs and income programs that we have now really benefit not just business, but big businesses; however, this is one part that was recommended by this committee which benefits

small employers and their workers. She said this bill has a fairness and equity about it and is appropriate use of those tobacco funds.

SEN. DEPRATU said once again that it was never the intention of the Jobs and Income Committee that they would look to the tobacco funds to fund this, and he feels that that is what is being done now and it is an inappropriate use of those settlement funds.

SEN. STANG said sometimes bills don't end up the way they started, but this is more than just a tax credit for employers, it is a benefit to the employees.

Vote: Motion failed 4-5 with Devlin, Ekegren, Ellis, Glaser and Depratu voting no (Roll call vote #9).

Motion/Vote: SEN. DEPRATU moved that HB 240 BE TABLED. Motion carried 5-4 with Bohlinger, Eck, Ellingson and Stang voting no (Roll call vote #10).

The Committee received a memo from Harold Blattie, Stillwater County Commissioner Chair, to **REP. ROBERT STORY**, regarding **HB 678**, **EXHIBIT(tas80a11)**, "Fiscal Impacts of Alternative Development Patterns: Broadwater and Gallatin Counties, **EXHIBIT(tas80a12)**, and "The Fiscal and Economic Impacts of Local Conservation and Community Development Measures," **EXHIBIT(tas80a13)**.

SENATE COMMITTEE ON TAXATION

April 13, 1999

PAGE 24 of 25

ADJOURNMENT

Adjournment: 4:00 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas80aad)